

IN THE DISTRICT COURT OF LINCOLN COUNTY  
STATE OF OKLAHOMA

FILED

JAN 18 2022

CINDY KIRBY, COURT CLERK  
LINCOLN COUNTY, OKLAHOMA

ALAN BERFG AND JULIANNE BERG,  
As Next Friend of M [REDACTED] B [REDACTED],  
A minor,

Plaintiffs,

Vs.

INDEPENDENT SCHOOL DISTRICT NO. 4  
OF LINCOLN COUNTY, OKLAHOMA,  
A/K/A WELLSTON PUBLIC SCHOOLS,

Defendant.

Case No.

CJ-22-4

**PETITION**

Comes now Plaintiffs, Alan Berg and Julianne Berg, as next friend of M [REDACTED] B [REDACTED], a minor, by and through her attorneys Kent Eldridge and Guinise Marshall Eldridge, and for their cause of action do allege and state as follows:

**PARTIES**

1. Plaintiff Alan Berg is the father of the minor child M [REDACTED] B [REDACTED]. Plaintiff Julianne Berg is the mother of M [REDACTED] B [REDACTED].
2. Defendant Independent School District No. 4 of Lincoln County, Oklahoma, a/k/a Wellston Public Schools, is a political subdivision of the State of Oklahoma located at 700 Birch Street, Wellston, Oklahoma 74881.
3. The Board of Education of Wellston Public Schools is the governing body of Independent School District No. 4 of Lincoln County, and is located at 700 Birch Street, Wellston, Oklahoma 74881.

### **JURISDICTION AND VENUE**

4. This cause of action is brought pursuant to 42 U.S.C. Section 1983 which provides in relevant part, “Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress...”; 42 U.S.C. Section 1988 entitled “Proceedings for Vindication of Civil “Rights” for attorney associated in this matter, and the Fifth and Fourteenth Amendments to the Constitution of the United States.
5. Venue is proper Lincoln County, Oklahoma in that all of the acts or omissions giving rise to this claim occurred in this county.

### **FACTUAL ALLEGATIONS OF PLAINTIFF**

6. M[REDACTED] B[REDACTED] is an honor student who attends Wellston Public Schools. On November 12, 2021, during the exchange of classes, she took out her phone and began to record a student who told her she intended to engage in a fight with another student. There had been many reports to the teachers and coaches that the fight was going to take place and the teachers and coaches ignored the students’ warnings. M[REDACTED] B[REDACTED] began to record the fight, decided that she should not record the fight and left the area before the fight had ended. Because the fight was what she considered not to be a fair fight, she did not want to be a part of the crowd and she stopped recording the fight and later deleted the footage.
7. On November 12, 2021, M[REDACTED] B[REDACTED] was suspended for the following reasons which appears on the Suspension notice dated November 12, 2021: “Video Recording an assault

of another student. MB followed and recorded the student who was planning to attack another student physically from the metal building to the gym area, she stayed and recorded the fight. MB did not notify an adult as the attack was happening.

8. According to Suspension notice, the suspension began on November 12, 2021, and ended on November 16, 2021.
9. After Plaintiff's received the Suspension notice, a suspension hearing was scheduled with the Superintendent.

### **CAUSES OF ACTION**

#### **DEPRIVATION OF PROCEDURAL DUE PROCESS IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE STATE OF OKLAHOMA**

10. Plaintiffs incorporate Paragraphs 1 through 9 of this Petition as though fully and specifically set out herein.
11. According to the policies of the Wellston Public Schools, after the suspension was imposed, B█ should have been given the opportunity to appeal to the suspension committee.
12. On November 14, 2021, Plaintiff Julianne Berg advised Mike Franz that she wanted to appeal the suspension of her daughter, M█ B█. Pursuant to the Board Policies regarding suspension of students.
13. B█ was not given the opportunity to appeal to the suspension committee, but rather her appeal was handled by the Superintendent.

14. Despite the request for appeal, Plaintiffs were not given the opportunity to present evidence, cross examine opposing witnesses, be represented by counsel, or offer evidence in the student's behalf.
15. Because the appeal was decided by the Superintendent rather than the suspension committee, there is no mechanism under the present Wellston Public School policy to appeal the suspension to the Board of Education.
16. As a result of the deprivation of due process, M■■■■ B■■■ now has a permanent stain on her academic record, which prevents her from applying and being accepted to the college of her choice.
17. As a result of M■■■■'s academic record during the school semester, she maintained an "A" average which exempted her from having to take the semester final examination. However, she was informed by her teachers that as a further punishment after the suspension, she would be required to take the final semester examination.
18. There is no policy or procedure by the Wellston Public Schools which would allow the imposition of continued disciplinary actions after the period of suspension has been served.

**DEPRIVATION OF LIBERTY INTEREST IN VIOLATION  
OF THE FIFTH AND FOURTEENTH AMENDMENTS TO  
THE CONSTITUTION OF THE UNITED STATES AND THE  
FIFTH AMENDMENT TO THE CONSTITUTION OF THE  
STATE OF OKLAHOMA**

19. Plaintiffs incorporate Paragraphs 1 through 18 of this Petition as though fully and specifically set out herein.
20. Prior to the suspension, M■■■■ B■■■ was a member of the cheering squad, and a member of the girls' basketball team and served as the team manager.

21. Participation in extracurricular activity is key to being able to apply for and for acceptance to the college of her choice.
22. The eligibility requirements for participation in the extracurricular activities is to maintain semester grades and that the student must be at school a minimum of 3 hours the day of the activity.
23. After the imposition of the suspension, and the denial of a procedurally appropriate appeal, M[REDACTED] B[REDACTED] was summarily suspended from her position as cheerleader and her position as manager of the girls' basketball team.
24. There are no provisions in the student disciplinary policy which would allow for continued punishment by the District after discipline has been imposed and that discipline has been served.
25. Plaintiffs brought the fact that M[REDACTED] B[REDACTED] continued to be subjected to disciplinary action beyond the suspension period to both the principal and to the Superintendent.
26. Both the Principal and the Superintendent maintained that the actions of the individual teachers who imposed the discipline was beyond their control and not an official decision of the Wellston School District.
27. Plaintiffs maintain that M[REDACTED] B[REDACTED] had a liberty interest in continued participation in extracurricular activities, so long as she met the Scholastic Eligibility and Attendance Requirements set by the Wellston School District.
28. At all times, M[REDACTED] B[REDACTED] has continued to maintain an "A" average and has continued to meet all attendance requirements.

29. Plaintiffs contend that the actions by the employees and agents of the Wellston School District in continuing to impose discipline, beyond the policies which outline the imposition of student discipline, are arbitrary and capricious.

**DEPRIVATION OF SUBSTANTIVE DUE PROCESS  
OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE  
CONSTITUTION OF THE UNITED STATES AND THE FIFTH  
AMENDMENT TO THE CONSTITUTION OF OKLAHOMA**

30. Plaintiffs incorporate Paragraphs 1 through 30 of this Petition as though fully and specifically set out herein.
31. Every citizen in the State of Oklahoma has a right to be a witness. The Wellston School District suspended M [REDACTED] B [REDACTED] for being a witness to a fight.
32. The Wellston School District, after prohibiting B [REDACTED] from being a witness, then punished her for not reporting what she had witnessed.
33. Plaintiffs contend that the Wellston School District policy to prevent its students from being a witness is violative of both procedural and substantive due process.
34. Plaintiffs further contend that the Wellston School District police to punish its students for not reporting that which the Wellston School District prohibits from witnessing is violative both of procedural and substantive due process.

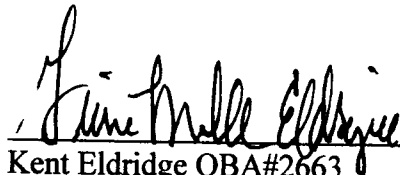
**DAMAGES**

35. Plaintiffs incorporate Paragraphs 1 through 34 of this Petition as though fully and specifically set out herein.
36. As a result of the actions of Defendant Wellston School District, Plaintiffs have suffered financial damages, emotional damages, liberty interest, scholarship opportunities, college admission opportunities, nightmares, depression loss of hope, feelings of helplessness, loss of academic relationships.

**PRAYER FOR RELIEF**

37. Plaintiffs pray for injunctive relief, specifically, that the suspension be removed from the permanent academic record of M[REDACTED] B[REDACTED] and that M[REDACTED] B[REDACTED] be reinstated to the extracurricular activities in which she previously participate; that the Wellston School District be enjoined from prohibiting its students to be witnesses; enjoin the Wellston School District from imposing discipline outside the procedures which are delineated in its policies and procedures; award Plaintiffs damages in an amount in excess of ten-thousand-dollars and award Plaintiffs a reasonable attorney fee.

JURY TRIAL DEMANDED.  
ATTORNEY'S FEES CLAIMED.

A handwritten signature in black ink, appearing to read "Kent Eldridge", is written over a horizontal line.

Kent Eldridge OBA#2663  
Guinise Marshall Eldridge OBA#13902  
KENT ELDRIDGE, P.C.  
222 N.W. 13<sup>th</sup> Street  
Oklahoma City, Oklahoma 73103  
(405) 235-6565 Phone  
(405) 523-2108 Fax